

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 42, 43, 45-97, 103-126, 130-138 and 145-147 are pending in the application, with claims 42, 48, 58, 64, 69, 75, 85, 91, 97, 145, 146 and 147 being the independent claims. Claims 139-144, 148 and 149 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. Claims 42, 97 and 147 are sought to be amended in accordance with the Examiner's comments set forth in Paper No. 20, page 2, and the Examiner's suggestions provided in the telephonic interview with the undersigned on August 13, 2003.

It is believed that the amendments presented above will place the application in condition for allowance and/or in better form for appeal. The amended claims introduce no new matter and raise no new issues that would require further consideration and/or search. Applicants therefore respectfully request that the amendments after final action be entered and considered. *See* 37 C.F.R. § 1.116(a).

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

I. Telephonic Interview

Applicants thank the Examiner for the courtesy of a telephonic interview with the undersigned on August 13, 2003, during which the outstanding claim objections and the claim rejections under 35 U.S.C. § 112, first paragraph, were discussed.

II. Claim Objections

Claims 42 and 97 were objected to because, according to the Examiner, "the claims do not begin with an article." (Paper No. 20, page 2.) Claims 42 and 97 have been amended to recite "An isolated *E. coli*" and "An *E. coli*," respectively, as suggested by the Examiner. Accordingly, the objection to claims 42 and 97 has been fully accommodated and should be withdrawn.

III. Claim Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 145-149 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. (See Paper No. 20, page 3.) This rejection relates to the availability of the deposited *E. coli* strains recited in the claims. With respect to these strains, the Examiner stated that Applicants must provide a statement regarding 37 C.F.R. § 1.808(c). (See Paper No. 20, pages 3-4.)

Applicants hereby state that, upon the granting of a patent covering the deposited material (NRRL B-30143 and NRRL B-30144), all restrictions on the accessibility of deposited strains NRRL B-30143 and NRRL B-30144 will be irrevocably removed and the strains will be available to the public.

With respect to strains ATCC 9637 and ATCC 33625, recited in claims 147-149, Applicants note that these strains are commercially available from the American Type Culture Collection, Manassas, Virginia. Applicants believe that the commercial availability of these strains is sufficient evidence to indicate that the strains are "known and readily available" as required under the USPTO's Deposit Rules. (*See* MPEP § 2404.01). Nevertheless, in order to expedite allowance of the application, claim 147 has been amended to remove reference to ATCC 9637 and ATCC 33625, and claims 148 and 149 have been cancelled.

In view of the statement set forth above, the amendment to claim 147, and the cancellation of claims 148 and 149, Applicants respectfully request that the rejection under 35 U.S.C. § 112, first paragraph, be reconsidered and withdrawn.

IV. Claim Rejections Under 35 U.S.C. § 102

A. Porter

Claims 139 and 140 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Porter *et al.*, *Arch. Biochem. Biophys.* 254:353-367 (1987). (*See* Paper No. 20, page 4.) Applicants respectfully traverse this rejection.

Nonetheless, solely to expedite prosecution, claims 139 and 140 have been cancelled. Therefore, this rejection is moot and should be withdrawn.

B. Alterthum

Claims 142 and 143 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Alterthum *et al.*, *Appl. Environ. Microbiol.* 55:1943-1948 (1989). (See Paper No. 20, page 5.) Applicants respectfully traverse this rejection.

Nonetheless, solely to expedite prosecution, claims 142 and 143 have been cancelled. Therefore, this rejection is moot and should be withdrawn.

V. Claim Rejections Under 35 U.S.C. § 103

A. Dower in View of Porter

Claim 141 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dower *et al.*, *Nucl. Acids Res.* 16:6127-6145 (1988) in view of Porter *et al.* (See Paper No. 20, pages 5-6.) Applicants respectfully traverse this rejection.

Nonetheless, solely to expedite prosecution, claim 141 has been cancelled. Therefore, this rejection is moot and should be withdrawn.

B. Dower in View of Alterthum

Claim 144 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dower in view of Alterthum. (See Paper No. 20, page 7.) Applicants respectfully traverse this rejection.

Nonetheless, solely to expedite prosecution, claim 144 has been cancelled. Therefore, this rejection is moot and should be withdrawn.

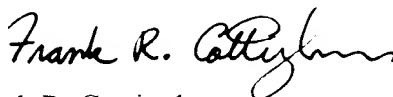
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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